IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20743 of 2005
With
SPECIAL CIVIL APPLICATION No. 20744 of 2005
With
CIVIL APPLICATION No. 6883 of 2006
In SPECIAL CIVIL APPLICATION No. 20743 of 2005
With
CIVIL APPLICATION No. 6881 of 2006
In SPECIAL CIVIL APPLICATION No. 20744 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?No

2 To be referred to the Reporter or not ?No

3 Whether their Lordships wish to see the fair copy of the judgment ?No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?No

5 Whether it is to be circulated to the civil judge ?No

==========

RAJESH GHANSHYAMBHAI SARKAR - Petitioner(s)
Versus
SHALINIBEN SUNIL MURATHIYA & 2 - Respondent(s)

==========

Appearance :
MR MB GANDHI for Petitioner(s) : 1,MR SUNIT S SHAH for Petitioner(s) : 1,MRS TRUSHA M GANDHI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2.
MR JB DASTOOR for Respondent(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 26/02/2007

ORAL JUDGMENT

1. In this matter both the parties have stated that the matter may be disposed of finally and therefore I issue Rule. Rule is waived by Mr.J.B.Dastoor, learned advocate for the respondents. Hence the matter is taken up for final disposal.

2. Rajeshbhai Ghanshyambhai Sarkar, petitioner, has filed this petition under Article 227 of the Constitution of India, with a prayer that this Court may be pleased to quash and set aside the order dated 15.9.2005 below Exh.15 passed by learned Presiding Officer, Fast Track Court no.8, Ahmedabad (Rural) in Civil Misc. Appeal No.64 of 2004. The petition was filed on 10.10.2005.

3. I have heard Mr.M.B.Gandhi, learned advocate for Mr.Sunit S.Shah, learned advocate for the petitioner. He has made following submissions.

3.1 Respondent leased out suit premises being Plot No.354, Road No.7, Kathwada GIDC, Village Kathwada, Taluka Daskroi, District Ahmedabad to the petitioner on 1.8.2003 and rent note came to be executed

containing terms and conditions of the lease.

3.2 Petitioner got industrial shed constructed on suit premises and then obtained electricity connection from GEB by paying substantial amount, purchased grinding and straightening machines, purchased raw materials i.e. S.S.Round Bards, got registration under Gujarat Sales Tax Act and Rules and Central Sales Tax Act and Rules, obtained registration as “Small Scale Industry” under the Gujarat Sales Tax Act.

3.3 Thereafter on 16.2.2004 Respondents threatened forcible dispossession.

3.4 Being aggrieved and dissatisfied by the said action, petitioner filed Regular Civil Suit No.94/2004 on 17.2.2004 praying inter alia relief against forcible dispossession without following due process of law and for interim relief to the said effect.

3.5 The respondents changed petitioner's lock and put their board somewhere on 17/18th April, 2004.

3.6 Thereafter petitioner filed application for amendment in view of the changed circumstances on 16.7.2004. The trial Court by its order dated 19.7.2004 granted Exh.57 and 59 for amending plaint and application for interim relief.

3.7 The trial Court decided application Exh.5 for interim relief directing the parties to maintain status-quo while rejecting prayer for getting back machineries by order dated 19.7.2004.

3.8 Being aggrieved and dissatisfied with the said order, the petitioner filed Civil Misc.Appeal No.66/2004 and respondent filed Civil Misc.Appeal No.64/2004 before the District Court somewhere in August 2004. The learned Presiding Officer, Fast Track Court No.8, Ahmedabad (Rural) by judgment and order dated 15.9.2005 heard and disposed of both appeals vacating status-quo granted by District Court and rejecting prayer for getting back machineries.

3.9 Being aggrieved and dissatisfied with the said order, the petitioner has filed present petition before this Court somewhere on 10.10.2005. This Court thereafter pleased the pass the orders dated

13.10.2005 and 28.10.2005.

3.10 Fulsing Kevalsing Murathiya – respondent No.3 has filed affidavit-in-reply dated 18.11.2005 on page 95, and as per the said affidavit, defendants No.1 and 2 have sold the property to M/s.Kanoi Steel Corporation by registered sale deed on 15.9.2005 and thus the plot/industrial shed is also transferred to M/s.Fivebro Water Services Pvt. Ltd., on 15.9.2005. The copies of the said documents have been annexed with the said affidavit.

3.11 The petitioner through Rajesh G.Sarkar has filed rejoinder dated 22.1.2007 pointing out all these facts which I have set out earlier in this behalf. In rejoinder petitioner also denied certain averments made by respondent No.3.

4. In view of the same, if the following order is passed, the same will be in the interest of justice.

(i) This Court requests the learned Presiding Officer, Fast Track Court No.8, Ahmedabad (Rural) to hear both Civil Misc.Appeals No.64 of 2004 and 66 of 2004

afresh in view of the further developments which I have considered and put it on record because those facts were not available before the appellate court at the relevant time.

(ii) The learned Judge is requested to dispose of the same in accordance with law without being influenced by the order passed by this Court as this Court has not decided the same on merits of the matter.

(iii) It will be open for the learned appellate Judge to consider the application for possession which has been made in the civil application and decide the same in accordance with law.

(iv) As the appeal is of 2004, the learned Judge is requested to decide the same as expeditiously as possible but preferably by 31st August, 2007.

5. With the aforesaid observations and directions, both these petitions stand disposed of with no order

as to costs.

6. In view of the disposal of the main matter, no order on Civil Applications No.6883 of 2006 and 6881 of 2006.

(K.M. Mehta, J.)

syed/